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THE INFLUENCES AND RISKS OF BEING IMPACTED BY COVID-19 AS AN EXCUSE FOR OVERMACHT OR FORCE MAJEURE TO POSTPONE THE OBLIGATION TO REPAY DEBT

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Abstract

The government has issued some policies in response to the Covid-19 pandemic. Some policies include working and studying from home, social and physical distancing, stay at home, and large-scale social limitation. These policies bring economic impacts to the society. The statement of the Republic of Indonesia's President, Joko Widodo (Jokowi) which gives credit relaxation to the society whose economic condition is impacted by the new coronavirus or Covid-19 is publicly questioned. The method used in this research is the juridical-normative method. Results of this research explains that the government has given a policy regarding the risks and the influences of being impacted by Covid-19 as an excuse for a forced condition/overmacht for the postponement of the obligation to repay debt. The regulations on overmacht or force majeure is contained in Article 1244 and Article 1245 of BW. The debtors who are impacted by the Covid-19 are not in default, but they are in the condition of relative overmacht or force majeure. Practically, it is a temporary overmacht. It can become the reason for the implication of agreement, which is postponed from the determined period.

Keywords: *Impacted, Covid-19, Overmacht*

A. INTRODUCTION

The Corona Virus Disease 2019 (Covid-19) has spread all over the world. This disease was known to infect human beings for the first time in Wuhan City, People's Republic of China, at the end of 2019.¹ This new type of virus has never been known before to infect human beings. It is zoonotic, which means that the infection was from animals to human beings. The coronavirus caused the victims to experience out of breath, high fever, and cough. In worse cases, the infection causes pneumonia, acute respiratory syndrome, kidney failure, and death. Since March 2nd, 2020, it is

¹ Silpa Hanoatubun, Dampak Covid – 19 terhadap Prekonomian Indonesia, journal.id/Edupsyscouns/issue/view/9 hlm 17

regarded as a Global Pandemic by the World Health Organization (WHO).² On March 11th, 2020, to prevent the spread of that virus, the government and the regional governments issued some policies, including working and studying from home, social and physical distancing, stay at home, and large-scale social limitation. Then, the President of Indonesia, Joko Widodo issued the Presidential Decree No. 12 of 2020 on April 13th, 2020, which stated that the Spread of the Covid-19 is a National-Scale Non-Natural Disaster.

The lockdown policy is the best method to restrict, prevent, and handle the spread of the Covid-19 both within the state and between states. This effort is what is currently applied by many countries in the whole world, thus the world experienced what is called “The Great Lockdown”. But, to handle the spread of this disease, there needs to be more serious efforts than just applying the lockdown, social distancing, or prohibition of travel. China, South Korea, and Japan has succeeded in preventing the spread of the virus, which doesn’t mean much without international support. International support is crucial, remembering that not all countries apply the same policies and have the same social, economic, and political systems. Thus, there is a variation of the lockdown’s success between one country and another.³

Some countries still deny the existence of the virus. Some others responded slowly and didn’t take this case seriously.⁴ And some other countries don’t have the adequate resources to solve this problem. The peak of this global pandemic is still not clear, including regarding when this pandemic will end. To handle this crisis, the international society does not only need international support, but also effective leadership. An example of an effective leadership is when the United States applied the policy of the Global War against Terrorism, which is proven to be effective. Until now, in handling the Covid-19, there doesn’t seem to be any effective leaderships from big countries like the US or International Institutions like WHO.

² Muhammad Chatib Basri, *Perekonomian dan Virus Corona*, Harian Kompas, 28 Februari 2020 Hlm 1

³ Mohammad Hidayaturrehman, Edy Purwanto. COVID-19: Public support against the government's efforts to handle and economic challenges, *Jurnal Inovasi Ekonomi* Vol. 05 No. 02 June 2020 Page 31-36

⁴ Sholikah, N., & Suni, P. (2020). *Kesiapsiagaan Indonesia Menghadapi Potensi Penyebaran Corona*, hlm 49

The issued policies bring economic impacts to the society.⁵ For example, there is a loss or the decrease of dayworkers' and employees' income. Motorcycle taxi drivers and online motorcycle taxi drivers have decreased income, just like retailers and peddlers. Businesses on tourism, hotels, restaurants, and others also lost their income. But there are also some businesses which are not impacted, such as businesses in the health sector (like apothecaries) and groceries shop (rice grains, oil, instant noodles) etc.

During this pandemic, President Joko Widodo (Jokowi) issued a statement, which gives credit relaxation to the society who are economically impacted by the coronavirus or the covid-19. This statement is questioned by the public. Some citizens start to ask and even demand the multi-finance or the leasing companies to give that ease in debt repayment. Association of Finance Companies Indonesia (Asosiasi Perusahaan Pembiayaan Indonesia/APPI) gives a response regarding the plentiful complaints and questions regarding how to obtain this relaxation. APPI states that policies of the Financial Service Authority (Otoritas Jasa Keuangan/OJK) and the government regarding the credit relaxation cannot automatically be enjoyed by all finance institution debtors.

The debtors who have the right to obtain this special right to have restructuring for their credit are only those who use the loans for productive activities, such as online taxi drivers and fishermen. This is because workers in this sector are the ones who are directly impacted by the spread of the coronavirus disease, which makes their mobility limited and many now work from home. Based on the explanation above, thus the focus problem of this research is: The influences and risks of being impacted by the Covid-19 as a reason of force majeure/overmacht to postpone the obligation to repay debt.

B. RESEARCH METHOD

The method used in this research is the juridical-normative research method. It describes the legal protection for debtors who are impacted and the risk of the Covid-19 as the postponement of the obligation to repay debt.

⁵ Yuliana, corona virus sebuah tinjauan literatur, wellness and health, volume 2 no 1 2020 hlm 88

C. DISCUSSION

Overmacht or force majeure is a condition where an agreement cannot be fulfilled unintentionally as it should be and legal regulations are by force unable to be complied with as before. More concretely, the overmacht or force majeure is a condition where after an agreement is made, there are some circumstances which inhibits the debtors from fulfilling their obligations. In this case, the debtors cannot be blamed. They do not have the obligation to bear the risks and they cannot predict this condition before the agreement was made. This condition happened before the debtors were neglectful in fulfilling their performance.

Based on the description above, the overmacht or force majeure is a condition where a person cannot fulfill their repayment of debt which they had promised of before. It means that they violate the agreement due to a condition in which they are not to blame for as it is unpredictable. In its practice, there are two types of the overmacht or force majeure, which are absolute and relative. A condition is regarded as an absolute overmacht or an absolute force majeure if that condition makes everyone unable to carry out the agreement. Meanwhile, it is regarded as a relative overmacht or relative force majeure if only some people cannot fulfill their contracts in that condition.

Not repaying debt is a default action, which means that the debtor cannot fulfill their performance anymore. They cannot pay off their debt; they cannot fulfill the payment; or they are wrong in fulfilling their obligations. This failure of repayment is due to the decrease or the loss of income which happened concretely towards the employees or the dayworkers. This happened, for example, during the prohibition of work in the efforts to prevent the spread of the Covid-19 disease. This affected online and conventional motorcycle taxi drivers. Hotels and restaurants are deserted as there are almost no consumers. Shops and service offices are closed as they follow the government's orders to stay at home.

This inhibits the businesses from running properly. These businesses cannot avoid the condition. Not all businesses can be carried out online as an effort to avoid this condition. In the loan agreement, the promised loan must be paid until the return or the deposit of the principal, even if the return or the deposit has been carried out after the end of the period that the debt can be collected (Article 1766 BW).

There are some kinds of agreement execution in the condition of overmacht or force majeure, which are: a) complete overmacht, if the overmacht or force majeure makes the whole agreement impossible to be fulfilled at all; b) partial overmacht, which happens if the overmacht or force majeure makes part of the agreement impossible to be fulfilled; c) fixed overmacht, if the overmacht or force majeure makes an agreement continuously or forever impossible to be carried out; and d) temporary overmacht, if the overmacht or force majeure makes the fulfillment of the agreement postponed from the initial period of time determined at the start of the contract. For those who are impacted by the pandemic yet are bound by debt agreements, it may make them experience repayment failure. They cannot repay their debt which is their responsibility.

President Joko Widodo prohibits banks to collect debt to the customers using debt collectors during the time of the coronavirus pandemic. Banks or non-bank financial institutions are prohibited from chasing installments or worse use the debt collectors. This policy is effective from March 2nd, 2020 until the Covid-19 pandemic is over. Thus, for the debtors, their business activities run as normal. Casuistically, the debtors have exited from a condition of overmacht or force majeure. This suggestion is strengthened by the Minister of Political, Legal, and Security Coordination, Prof. Mahmud M. D.'s statement, regarding the Presidential Decree No. 12 of 2020. This decree may be used as a gateway for negotiation between businessowners in the force majeure condition due to the covid-19 pandemic.

Debtors may apply for an agreement to the creditors regarding the decrease or the relief or the easing of the obligation or the activity of debt repayment. Based on that agreement, thus the debtors are free from the obligation to pay fees, interests, and losses until the return or the deposit of the principal funds even after the period of when the debt may be collected to the debtors as the application. The regulations regarding the overmacht or force majeure condition are stipulated in Articles 1244 and 1245 BW. These articles are interpreted by Wirjono Prodjodikoro on Article 1244 BW, "Foreign causes which cannot be taken responsibility of," and Article 1245 BW, "a condition of force or a coincidence."

There is an explanation regarding the evidencing process on whether or not a condition of force has been burdened to the debtors. If the debtors have the reason for overmacht or force majeure which makes them unable to fulfill the repayment of the debt agreed upon, which means that they violate the contract due to the policies of the central and the regional governments regarding the prevention of the Covid-19 casuistically, the debtors who are impacted by the Covid-19, with a condition which makes it impossible for them to carry out their business, or if the business cannot run well and they cannot avoid this condition for example by doing the business online as an effort to avoid this condition, thus casuistically, the debtors has experienced the condition of overmacht or force majeure. As a result, the income they obtained from their business cannot fulfill the debt repayment they promised. They violate the agreement of debt repayment due to a condition which cannot be controlled or which is unpredictable due to the spread of the Covid-19 disease.

Regarding the obligation to repay debt, in the loan agreement, it is stated that the debt must be repaid until the return or the deposit of the principle funds, even though the return or deposit has been carried out after the end of the period on when the debt may be collected. This is applied to the debtors who are impacted by Covid-19 with strong evidence.

The debtors who are impacted by the Covid-19 and are proven casuistically, are regarded as being in a condition where they cannot repay the debt they promised. It means that they have violated the agreement due to the Covid-19 pandemic. Thus, this debtor is not regarded as default. Yet, they are in a condition of relative overmacht or force majeure and practically, it is a temporary condition of force majeure. This is because, casuistically, the application of the central and regional governments' policies to prevent the spread of the Covid-19 pandemic is temporary. It can be used as a reason to apply the postponement of the contract from the initial time determined in the agreement, which casuistically also regards the grace period.

Regarding the debt relaxation or structuralizing in which its application is based on Article 1338 BW, the Financial Services Authority of Indonesia stated that all valid contracts made becomes a regulation to those who made them. A contract cannot be revoked unless there is an agreement between the two parties or if there are reasons which are stated in the constitution. If there is no result to the debtors'

application of request or if there are no agreements with the creditors, thus the debtors may file this case to court with the reason of overmacht or force majeure. Based on the court's verdict, there will be the freedom from paying fees, interests, and losses until the return or the deposit of the principle funds even after the end of the period where the debt may be repaid by the debtors as its basis.

The debtors who are impacted by the Covid-19 should prioritize renegotiation to receive relaxation and restructuring of debt repayment. If there is no result, they may file the case to court with the reason of being in a condition of overmacht or force majeure. This is so that they may be free from their obligations to pay fees, interests, and losses until the return or the deposit of the principle funds, even after the end of the period where the debt may be collected. It can also be postponed or decreased based on the agreement or the court verdict.

Regarding the law of collateral in pawn, mortgage, mortgage rights, and collateral in fiduciaries of debtors whose businesses are impacted by the pandemic and brings them to the condition of failure to repay debt, or if they cannot fulfill the repayment of debt or the obligations which bind them, it cannot be said that they experience default. But, for those impacted, postponement of repayment (status quo) the decrease, or the exemption may be applied based on an agreement or a court verdict, until there is a solution to this Covid-19. Thus, the execution to the collateral should not be carried out.

D. CONCLUSION

From the description above, it can be concluded that the government has issued a policy regarding the influences and risks of being impacted by the Covid-10 as the reason for the condition of force majeure or overmacht to postpone the obligation to repay tax. There are some kinds of overmacht condition. There are the complete overmacht, partial overmacht, permanent overmacht, and temporary overmacht. During the Covid-19 pandemic, President Joko Widodo prohibits banks from collecting debt to the customers using debt collectors. Banks and non-bank financial institutions are prohibited from chasing installments, especially using debt collectors. The regulations on the overmacht or force majeure is stipulated in Articles 1244 and 1245 BW. Debtors who are by evidence influenced by the Covid-19 are casuistically included as being in the condition where they cannot fulfill the debt repayment.

Thus, they are not stated as default, yet they are in a condition of relative overmacht or force majeure. Practically, it is a temporary force majeure. The government's policies regarding the preventing the Covid-19 from spreading is temporary. It can be used as the reason to carry out the postponed contract from the determined period.

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